

REMARKS

The Examiner and the SPE are thanked for the courteous interviews conducted on June 2 and June 3, 2003 in which it was agreed that amendments made to the claims in response to the Official Action of May 7, 2003 will be entered.

Claim 1 has been amended to delete the phrase "as a main component", since the phrase is considered to be redundant, superfluous and unnecessary in defining and understanding what is covered by the present claims. Claims 1-4, 8 and 9 have been amended to recite the phrase, "and vitamin A precursor(s), derivative(s) and decomposed product(s) thereof" after "vitamin A". Basis for this limitation may be found on page 6, lines 1-15 in which vitamin A and vitamin A precursors, derivatives and decomposed products are recited for use in the composition of the present claims with specific examples given for each category. No new matter has been added into the amended claims.

REQUEST FOR RECONSIDERATION

Claims 1-13 are active in the case.

The rejection of Claims 1-9 and 11-13 under 35 U.S.C. §103(a) as unpatentable over Mathur et al is traversed.

The Examiner states on page 4 of the Official Action “While the reference teaches that the lipids therein are not capable of forming lamellar by itself, secondary lipids and/or cholesterol is used to form lamellar phase”. However, it is clear from column 3 of Mathur et al that the secondary lipid is necessary in addition to the primary lipid in order to form a lamellar phase and cholesterol is not a substitute for the secondary lipid, but only an ingredient that may be further added to the combination of primary and secondary lipids. See col. 3, lines 2-6 of Mathur et al which states “In either case, the primary lipid and, if lipid soluble, the secondary lipid are blended (preferably at elevated temperature) together with any sterol and other lipophilic additives, if any, that are added”. Further, see column 3, lines 49-65 for the list of primary and secondary lipids necessary for use in combination in Mathur et al, which list does not include cholesterol. Finally, see column 3, lines 66-68 which states “In certain instances, primarily the stearate derivatives, a sterol such cholesterol is a particularly useful additive”. Thus, it is clear that Mathur et al contemplates a composition that requires a primary lipid, a secondary lipid like those recited in column 3 and as a further optional additive, cholesterol.

The Examiner’s characterization of “consisting essentially of” as being equivalent to “comprising”, because there is no clear indication in the specification or claims of what the basic and novel characteristics of the invention are, is traversed. As argued above, Mathur et al clearly contemplates a composition containing a primary lipid, a secondary lipid and as a further optional additive, cholesterol. Therefore, since the specification indicates on page 4, lines 11-16 that cholesterol is an additive and does not recite the necessity of a secondary

lipid in order to form a lamellar phase, the basic and novel characteristics of the present claims are defined by the phrase “consisting essentially of”, which may include as an additive, cholesterol, but does not include the secondary lipid of Mathur et al, because the present specification is directed only to fatty acid monoglycerides with no recitation of the addition of a secondary lipid, which would change the basic and novel characteristics of the claimed invention. The claims distinguish over Mathur et al.

The rejection of Claim 10 under 35 U.S.C. §103(a) as unpatentable over Mathur et al in view of Yiournas et al is traversed.

Yiournas et al does not remedy the deficiencies of Mathur et al, since Yiournas et al is directed only to the disclosure that multilamellar vesicles are said to be “best for encapsulation or transportation of lipophilic materials” and does not teach or suggest the composition of the present claims. Claim 10 distinguishes over the combination of references.

The rejection of Claims 1-13 under 35 U.S.C. §112, second paragraph as indefinite is traversed.

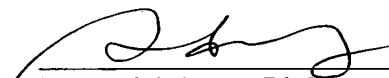
Claim 1 has been amended to remove the phrase “as a main component” and now through the recitation of the phrase “consisting essentially of” clearly limits the claim to one or more fatty acid monoglyceride(s) and vitamin A and vitamin A precursor(s), derivative(s) and decomposed product(s) thereof, and other additives which do not change the basic and essential nature of the composition. The Examiner’s assertion on page 3 of the Official Action that cholesterol is necessary to form lamellar structures is rebutted by the clear statements in column 3 of Mathur et al that a primary lipid and a secondary lipid are necessary in forming the lamellar structure and that cholesterol may be optionally added. The present specification on page 4 clearly indicates that cholesterol is only a preferred additive and necessary to the function of the composition of the present claims.

Finally, the Examiner in his advisory paragraph on page 3 of the Official Action noting that the phrase "derivative(s) thereof" may be indefinite has been remedied by the recitation of the phrase "vitamin A and vitamin A precursor(s), derivative(s) and decomposed product(s) thereof", which makes the claims definite, since page 6, lines 1-15 of the specification indicates all of the above categories with specific examples for each category as appropriate for use in the composition of the present claims. The claims meet the requirements of 35 U.S.C. §112.

It is submitted that Claims 1-13 are allowable and such action is respectfully requested.

Respectfully submitted,

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